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Page 5REMARKS/ARGUMENTS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested. By the present amendment, claims 1-5 have been amended. New claims 6-7 have been added.

Claim Objections

Claims 1-3 were objected to because of informalities. Claims 1-3 have been amended to correct these informalities and, thus, it is believed that the objection to claims 1-3 has been overcome. The claims were also objected to for being misnumbered, namely, because claims 4 and 5 were misnumbered as claims 5 and 6. Applicant acknowledges the Examiner's renumbering of claims 5 and 6 as claims 4 and 5, respectively.

Claim Rejections under 35 U.S.C. §103

Claims 1-5 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,588,105 to Schmitz et al. (hereafter "Schmitz") in view of U.S. Patent No. 5,702,133 to Pavur et al. (hereafter "Pavur"). It is respectfully submitted that amended claim 1 is patentable over the combination of Schmitz and Pavur and is therefore allowable.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Amended claim 1 recites a closure cap for sealing an opening in a base part that includes an exterior marginal web and a shielding section that protrudes past the marginal web. A hot-melt adhesive is arranged in the area of the shielding section.

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An attachment arrangement grips the base part when the closure cap is inserted into the opening. A joint zone that has a flexural rigidity that is reduced versus that of the shielding section is configured between the marginal web and the shielding section. The distance between gripping contact areas of the abutment arrangement and the bottom side of the hot-melt adhesive, which faces the marginal web, is smaller than the thickness of the base part in the marginal area of the opening.

Schmitz does not teach or suggest this structure. The Examiner asserts that in Schmitz the distance between the shoulder 7a and the underside of the heat-sealable ring 3a is smaller than the thickness of the vehicle panel 30. As shown in Fig. 11, however, this is clearly not the case as the shoulder 7a is spaced significantly from the underside of the vehicle panel 30. Therefore, Schmitz does not teach or suggest that the distance between a gripping contact area of an abutment arrangement and the bottom of hot-melt adhesive is smaller than the thickness of a base part in the area of an opening as recited in amended claim 1.

Furthermore, the Examiner acknowledges that Schmitz does not teach a joint zone between the marginal web and the shielding section that has a reduced flexural rigidity versus that of the shielding section, but asserts that Pavur cures the deficiencies of Schmitz. More specifically, the Examiner asserts that the depressed hub 232 of Pavur can be implemented into Schmitz and modified to be positioned closer to the base part, i.e., the vehicle panel 30 of Schmitz. The Applicants disagree with this rationale for several reasons.

35 U.S.C. §103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject

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matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." In making a determination of obviousness under 35 U.S.C. §103(a):

...the scope and contents of the prior art are determined; the differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. Graham v. John Deere, 383 U.S. 1, 17-18, 86 S. Ct. 684, 15 L. Ed. 2d 545 (1966).

In *KSR Int'l. Co. v. Teleflex, Inc.*, the Supreme Court provided further direction on establishing a case of *prima facie* obviousness by noting that following the principles set forth in *Graham v. John Deere*:

...may be more difficult ... because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit*. *Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness*. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741; 2007 U.S. Lexis 4745; 167 L. Ed. 2d 705; 75 U.S.L.W. 4289 (2007) (emphasis added).

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In the present case, the Examiner's rationale is not articulated and does not include a rational underpinning to support the conclusion of obviousness. The Examiner asserts that the depressed hub 232 of Pavur can be implemented into Schmitz and modified to be positioned closer to the base part to keep the closure tight and reduce the risk of accidental removal of the closure (Office Action page 4). Pavur, however, is silent regarding the rationale or reasoning behind providing the depressed hub 232. In other words, Pavur does not state that the depression is provided for any specific reason, such as to keep the closure tight and/or reduce the risk of accidental removal of the device. Furthermore, the Examiner provides no rationale, basis or support for the assertion that expanding the hub 232 closer to the base part would increase the closure and help prevent removal of the device. The allegation attempts to use impermissible hindsight based on the Applicants disclosure.

In any case, it is unlikely that the configuration of the depressed hub 232 in Pavur is actually weaker, i.e., has a reduced flexural rigidity, than the rest of the metal plug since such depressions are very often provided to enhance the stiffness of flat metal sheets. In other words, the depressed hub 232 appears to be provided to fix the lower circular disc 32 via a 180° bent rim (see Fig. 16) and not explicitly to reduce the stiffness of the metal plug as this would reduce the sealing force of the pad 218 against the sides of the opening. Therefore, Pavur does not teach or suggest a joint zone between a marginal web and a shielding section that has a reduced flexural rigidity versus that of the shielding section and, thus, Pavur does not cure the deficiencies of Schmitz. Accordingly, a *prima facie* case of obviousness has

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not been shown because the combination of Schmitz and Pavur does not teach or suggest every element recited in amended claim 1. For these reasons, it is respectfully submitted that amended claim 1 is patentable over the combination of Schmitz and Pavur and is therefore allowable.

Claims 2-5 depend from claim 1 and are allowable for at least the same reasons as claim 1 and for the specific limitations recited therein.

New Claims

Claim 6 recites that at least one recess extends entirely through the marginal web and allows the snap-in catches to move transversely to the marginal web.

Claim 7 recites that the joint zone terminates at a position that is spaced from the base part in a longitudinal direction a distance that is smaller than the distance between the shielding section and the base part in the longitudinal direction. The art of record does not teach or suggest this structure and, thus, it is respectfully submitted that claims 6-7 are patentable over the art of record and are therefore allowable.

In view of the foregoing, it is respectfully submitted that the above-identified application is in condition for allowance, and allowance of the above-identified application is respectfully requested.

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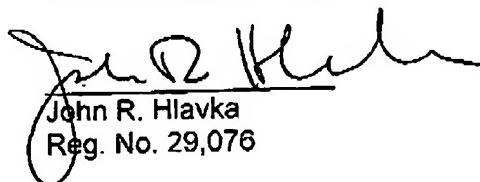
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Respectfully submitted,



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